

Dee May
Assistant Vice President
Federal Regulatory



1300 I Street, NW, Floor 400W
Washington, DC 20005

Phone 202 515-2529
Fax 202 336-7922
dolores.a.may@verizon.com

September 17, 2001

Reply Comments

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Bell Atlantic Corp. and GTE Corp., CC Docket No. 98-184

Dear Ms. Salas:

This letter responds to the comments received in the above-referenced proceeding concerning Verizon's requests to stop reporting performance results pursuant to the Bell Atlantic/GTE merger conditions with respect to Illinois, Ohio, and Pennsylvania. We submitted those requests in letters to the Chief of the Common Carrier Bureau dated July 17, 2001 and July 19, 2001.

Illinois and Ohio

The only party to comment specifically on Verizon's request to stop reporting performance results pursuant to the Bell Atlantic/GTE merger conditions with respect to Illinois – the Illinois Commerce Commission – agrees that the performance assurance plan for Illinois is comprehensive, and the ICC supports Verizon's request. No party opposed Verizon's request with respect to Ohio.¹

¹ AT&T stated that it does not oppose Verizon's requests with respect to Illinois and Ohio. AT&T Comments at 1 n. 1. WorldCom did not oppose Verizon's requests with respect to Illinois and Ohio, but "encourage[d] th[e] Commission to determine whether the states of Illinois and Ohio are contemplating the revision of their state performance plans that would call into question the comprehensive nature of the plans before rendering a decision on Verizon's request." WorldCom at 3-4. They clearly are not. As noted above, the Illinois Commerce Commission agreed with Verizon that the Illinois Plan is comprehensive. The Ohio PUC's order adopting the Ohio Plan is less than six months old. While one aspect of the Ohio order has been stayed, as Verizon explained in its request (note 2), that aspect has no effect on the comprehensive nature of the Ohio Plan. Moreover, as further explained below, the fact that a

Pennsylvania

Most of the comments on Verizon's requests focus on Pennsylvania. The arguments raised in those comments in opposition to Verizon's request are based on a misreading of Verizon's request, a misunderstanding of the merger conditions, or flawed reasoning. All are without merit, and Verizon's request should be granted.

For example, AT&T and the Pennsylvania Office of Consumer Advocate (OCA) opposed Verizon's request because the Pennsylvania Performance Assurance Plan does not apply to the former GTE service areas in Pennsylvania, which are known as "Verizon North." *See* AT&T at 2; OCA at 5-6. This argument is completely irrelevant. Verizon's letter explicitly stated that its request applied only to the former Bell Atlantic service areas in Pennsylvania.

OCA also makes an illogical argument that Verizon should not be permitted to "waive this commitment" based on its 271 application, when Verizon could have foreseen that it would be applying for 271 relief at the time it agreed to the merger conditions. *See* OCA at 6. This argument shows a fundamental misunderstanding of the merger conditions. First, Verizon's request with respect to Pennsylvania was not based on its 271 application, but instead was based on the existence in Pennsylvania of a comprehensive performance assurance plan. As the Commission is aware, the merger conditions expressly provide that the Performance Assurance Plan sunsets in a state on the effective date of a comprehensive performance plan adopted by a state commission applicable to Verizon. Merger Order, Appendix D, ¶ 17. (The Performance Assurance Plan also sunsets in former Bell Atlantic service areas when Verizon is authorized to provide in-region interLATA services in a state pursuant to 47 U.S.C. §271(d)(3). *Id.*)

Arguments Raised in Pennsylvania 271 Docket

AT&T, WorldCom, and ASCENT repeat here arguments raised in opposition to Verizon's section 271 application with respect to Pennsylvania. *E.g.*, AT&T at 2; ASCENT at 4-7; *see* WorldCom at 2. Verizon has fully responded to those arguments in its Reply Comments in that docket. *See* Reply Comments of Verizon at 58-66; Guerard/Canny/DeVito Reply Decl. Verizon will not overload the record here by attaching copies of its Reply Comments and Declaration from that docket, but responses to the arguments actually stated in the comments in this proceeding are set forth below.

First, AT&T, WorldCom, and ASCENT are plainly wrong in arguing that the Pennsylvania Plan is insufficient to provide Verizon with incentives for nondiscriminatory performance. The Pennsylvania PUC has found that its Plan provides "adequate financial incentives [for Verizon] to continue to meet its legal obligations after it has received approval under section 271." PUC Consultative Report in CC Docket 01-138 at 3. Moreover, under the increased amount of self-executing remedy payments to which Verizon is now subject in Pennsylvania (*see* Attachments A and B to our July 19 letter), Verizon is required to pay \$25,000 per CLEC for each sub-

state is considering revising its performance plan does not mean that the existing plan is not comprehensive.

measurement it misses for four or more consecutive months. If the current Plan had been in effect in the year 2000, Verizon would have paid \$16.7 million under the Plan from July through December 2000, or \$33.4 million on an annualized basis. (Because Verizon's first reports under the Plan were made in April 2000, July 2000 was the first month in which Verizon could have missed a measurement for four consecutive months.) That \$33.4 million in remedy payments would have amounted to 6.6 percent of Verizon's 2000 net return, which is greater than the 6.2 percent of its net return (\$36.7 million) that Verizon actually paid in New York in 2000. Thus, the current Pennsylvania Plan is at least as effective as the New York Plan, and as comprehensive as the Federal Plan.

In addition, Verizon's performance has improved under the current Pennsylvania Plan. For example, in March 2001, Verizon's remedy payments were 25 percent less than the amount it paid in December 2000, even though it was reporting on more measurements and reducing the number of measurements reported as Under Development or Under Review.

Second, AT&T, WorldCom, and ASCENT are also wrong that the Pennsylvania PUC's current proceeding to review the Pennsylvania Plan somehow calls its comprehensiveness into question. (They are also wrong that DOJ's comments in CC Docket 01-138 on the Pennsylvania Plan prove that it is inadequate, as the discussion above demonstrates.) It is not unusual for state commissions periodically to review the performance reporting and remedy plans that they have in place. Just as it was the PUC that devised the current Pennsylvania Plan, the PUC has now adopted a rebuttable presumption in favor of adopting the New York Plan. In response to the PUC's direction, Verizon has proposed two Plans, both of which satisfy the Commission's requirements. (As a result, AT&T's claim that Verizon has opposed efforts to adopt a remedy structure modeled on the New York PAP is incorrect.) This is a continuation of the PUC's long-standing and continued attention to the development of a suitable Plan for Pennsylvania.²

Third, AT&T's, WorldCom's, and ASCENT's arguments that the comprehensiveness of the Pennsylvania Plan is in question because Verizon "has not abandoned its legal right to challenge the PaPUC's authority to impose monetary consequences on it," *e.g.* AT&T Comments at 2; *see also* WorldCom Comments at 2; ASCENT Comments at 7, are wrong and misleading. Verizon originally appealed the Pennsylvania Plan because unlike New York, Massachusetts, and Connecticut, the PUC imposed the remedy plan before Verizon received section 271 authorization. Verizon withdrew its appeal, and the Pennsylvania PUC found that Verizon "has fully complied" with the requirement that it "withdraw[] . . . its pending appeal . . . challenging the Commission's statutory authority to impose self-executing remedies." PUC Consultative Report at 268. Any suggestion that Verizon should waive, in advance, its appeal rights on all future orders concerning a Pennsylvania performance assurance plan – orders that have not even been issued yet – is patently unreasonable.

² WorldCom's claim that Verizon failed to disclose the Pennsylvania PUC's open proceeding to the Commission is flatly wrong. Not only has Verizon thoroughly discussed the PUC's ongoing proceeding in the section 271 application, but it also advised Common Carrier Bureau staff of the PUC's activities in the context of the merger performance plan.

Arguments Concerning Specific Measures

ASCENT and OCA argue that the Pennsylvania Plan omits “critical measures” and that certain measures fail to capture performance, and therefore the Plan cannot be deemed comprehensive. In most cases, the measures cited are not included in the merger plan, and the Pennsylvania Plan, therefore is no less comprehensive than the merger plan. ASCENT cites measures for flow through, line splitting, and timeliness of billing completion notices as missing from the Pennsylvania Plan; it also argues that the billing measures in the Pennsylvania Plan fail to capture Verizon’s billing performance. OCA cites OR-2-02 (% On Time LSR Reject – Flow Through), OR-5-03 (% Flow Through Achieved), and NP-2 (Collocation).

First, OCA has simply misread the Pennsylvania Plan. Measure OR-2-02 is both reported in the Pennsylvania Carrier-to-Carrier reports and included in the Pennsylvania Plan.

Second, the merger plan does not contain measures for line splitting or for timeliness of billing completion notices. As a result, the absence of these measures from the Pennsylvania Plan does not make that plan less comprehensive than the merger plan. Similarly, ASCENT’s arguments about the billing measures in the Pennsylvania Plan are misplaced. The billing measure included in the merger plan – Timeliness of Carrier Bill – is also included in the Pennsylvania Plan. The Pennsylvania PUC adopted an additional timeliness measure specifically applicable to electronic BOS BDT bills in connection with its Secretarial Letter on Verizon’s 271 application. As a result, the Pennsylvania Plan is more comprehensive than the merger plan in this regard.

Third, while the merger plan describes measures for both Total Flow Through and Achieved Flow Through, the plan specifies that Verizon will report only one measure. For the former Bell Atlantic jurisdictions, Verizon has proposed that it report Total Flow Through. Verizon currently reports both Total Flow Through and Simple Flow Through in Pennsylvania. While the Pennsylvania Plan does not include remedy payments for flow through measures, those measures which cover the actual handling of CLEC orders – the timeliness of returning confirmation and reject notices to CLECs – are subject to remedies.

Fourth, the current Pennsylvania Carrier-to-Carrier Guidelines indicate that Verizon will propose a collocation performance measure following completion of the Pennsylvania PUC’s collocation proceeding. The PUC has clarified that it intends to apply the Pennsylvania Plan to that measure. In addition, the PUC has now directed Verizon to propose a collocation measure. See *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.*, Docket No. R-00994697, Opinion and Order at 64-65. It is clear, therefore, that the Pennsylvania PUC is also overseeing Verizon’s collocation performance.

Finally, ASCENT argues that the Pennsylvania Plan should not be considered comprehensive because, it claims, Verizon has unilaterally changed the way it reports measures or has failed to report some measures. ASCENT at 7. ASCENT is wrong.

ASCENT bases this claim solely on comments other parties filed in the proceeding concerning Verizon’s section 271 application, and does not discuss any specific measures in its comments. Verizon fully responded to other parties’ arguments in its Reply Comments and in the

Guerard/Canny/DeVito Reply Declaration in the Pennsylvania 271 proceeding. The first argument appears to relate to a measure not included in the merger plan – OR-6-03 (Percent Accurate LSRCs). In Pennsylvania, Verizon reports this measure using a sampling methodology, because its systems currently are unable to measure OR-6-03 for every order as the business rules call for. Verizon has consistently notified the Pennsylvania PUC that it is doing so.

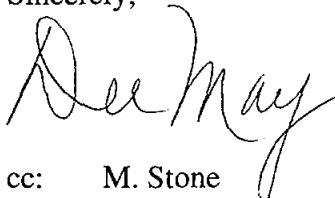
The second argument appears to relate to the number of measures reported as Under Development or Under Review in Pennsylvania. Verizon currently reports only one measurement as Under Development – Average Response Time – Manual Loop Qualification (PO-8-01). This measurement, which appeared for the first time in Pennsylvania in April 2001, remains under development because Verizon will not have a pre-order transaction for manual loop qualification until October. Therefore, there is no pre-order transaction to measure. In addition, Verizon currently reports no measurements as Under Review.

Conclusion

As the foregoing demonstrates, the Illinois, Ohio, and Pennsylvania plans are comprehensive, and Verizon should be permitted to cease reporting performance for these states under the merger plan.

If you have any comments, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dee May".

cc: M. Stone
D. Byrd